

Board of Appeals

December 2, 2021

Minutes

Chairman's Welcome and Media Notification: Mr. DeTerra opened the meeting at 6:30 p.m. and read the protocol for Zoom meetings and open Public Meeting Law.

Administrative Business**Quorum/Attendance**

Chairman, Peter DeTerra introduced the members of the Board:

Present: Francis Cox, Jamie DeSousa, Daryl Manchester, Peg Cook, Peter DeTerra, Ruy DaSilva

Absent: Kenneth Kendall and Alberto Silva

Acceptance of Minutes – November 2, 2021

Mr. Cox made a motion to accept the minutes from November 2, 2021 and was seconded by Mr. DeSousa. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).

Mr. DeSousa made a motion to move appeal number 9, property 182 Ebony Street, up to the first hearing. The motion was seconded by Mr. Cox and motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).

Public Hearings:

1. REF#: ZBA-2022-027: 182 Ebony Street. Applicant and Owner: Enrico G. and Linda M. Picozza. Applicant requests: (1) Special Permit pursuant to Section 198.21(d) to demolish existing and construct a single-family dwelling with 1,630 sq. ft.; and (2) Variance pursuant to Zoning Bylaw 198-9, requesting a variance from required front setback from Ebony Street of 30 feet to 20.5 feet.

The applicant's representative, Dave Davignon, from Schneider, Davignon & Leone, Inc. discussed the property. This property is a single-family dwelling and was constructed in 1950, according to assessor's records. The applicants would like to demolish their home and build a new dwelling; they have owned the home since 2003. The site is a long rectangle, 100 feet deep and 300 feet long. The existing house does not comply with FEMA regulations and is sitting near grade level. The house straddles the flood zone line between AE14 and DE16. The proposed footprint is not considered a dramatic increase. Furthermore, the existing house is nonconforming 20.2 feet from Ebony Street and the proposed dwelling will be 20.5 feet from the street. This would allow for improvement to the nonconforming setback. The setback along Ebony Street would be to a bay window and not the actual face of the house. Also included will be an uncovered porch and stairs, which will not count as part of the setback. The setback

would require a variance of 9.5 feet, which is closer than the current zoning requirement of 30 feet. The proposed project will comply with the side setback to the south, rear setback to the west and side setback to the north. The house will be built on concrete columns.

A portion of the house and the entire porch will be in the velocity zone. The applicants would like to build according to the worst flood zone, given the rising sea level. The house is partially located in DE16. The finished slab will be set at 10 feet, which will match the slab near the garage. The concrete columns will measure 18 feet, which will allow for parking under the building. Total height of the building will be at or below 35 feet, pursuant to the zoning regulation. The existing and new dwelling will be connected to town sewer and water.

Mr. Cox made a motion to grant the Special Permit and was seconded by Mr. DeSousa. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).

Mr. Cox made a motion to grant Variance and was seconded by Mr. DaSilva. The motion passed via roll call vote by Peg Cook, Francis Cox, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).

2. Administrative Appeal by Fairhaven Shipyard – re: 7 Union Street. REF#: ZBA-AA 01: Seeking reversal of zoning determination by the Town of Fairhaven Building Commissioner dated February 20, 2020.

The applicant's attorney, Adam Brodsky of Drohan Tocchio & Morgan, P.C., submitted a letter requesting continuance to the January 4, 2022 hearing date.

Mr. Cox made a motion to continue until January 4, 2022 and was seconded by Mr. DeSousa. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).

3. Administrative Appeal by A1 Crane – re: 86-88 Middle Street. REF#: ZBA-AA-02: Administrative Appeal from a letter dated April 7, 2020 from the Building Commissioner stating that the operation on the site is in violation of the mixed-use zoning regulations.

Building Commissioner, Chris Carmichael, gave an update on the project. The applicant has hired a new engineer and is working with the Conservation Commission. Everything else has been finalized with fire code and they look forward to moving along with a hearing, when their engineer can be present.

Mr. Cox made a motion to continue 86-88 Middle Street on the January 4, 2022 meeting. The motion was seconded by Mr. DaSilva and the motion passed unanimously via a roll call vote by Peg Cook, Francis Cox, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).

4. REF#: ZBA-2022-009: 123 Weeden Road. Applicant and Owner: Aguiar, Kyle.

The applicant seeks a finding from the Board that the existing non-conforming structure may be extended to include a proposed 1,200 sq ft addition; and that the alteration is not substantially more detrimental than the existing non-conforming use to the neighborhood pursuant to MGL 40A, Section 6.

Mr. Cox made a motion to approve the appeal and was seconded by Mr. DaSilva. The motion passed unanimously via roll call by vote Peg Cook, Francis Cox, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).

5. REF#: ZBA-2022-022: 184 Balsam Street. Applicant and Owner: Robert and Karen Sullivan
Applicant seeks a Variance to construct a dock greater than 75 feet in length due to shallowness of docking area pursuant to Zoning Bylaw 198-32.2(C)(3)(a) – Docks and Piers.

Mr. Cox recused himself from the public hearing.

The Sullivan's representative, Michael Koska, of Michael Koska & Associates, Inc. Registered Professional Engineers and Land Surveyors, presented the proposal to construct a ramp, dock, gangway, and two floats, along with a future high tide 16,000-pound air drive lift. The property is designated as extending into the salt marsh. Access to the dock from land will be via a 10-foot ramp, which is located above Mean High Water (MHW).

The proposed gangway and ramp are proposed to be 4-foot-wide and 1.5 times the salt marsh (6 feet long). The setbacks from the southerly line are 27.3 feet and 28.6 feet on the north side. There will be 10 feet of gangway/ramp and 45 feet of fixed dock to another gangway that is 3'x20' long, then to two 8'x16' floats. The floats will be orientated in this fashion, due to the minimum bylaw of 25' from extension of the property line. This pier is proposed to be 93' or 18' beyond the 75' Fairhaven Zoning Bylaw, which states that outside the hurricane barrier docks must be no longer than 75'.

Ronald Keys, property owner of 198 Balsam Street spoke on behalf of several residents objecting to the project. He read a letter that was submitted to the Board, signed by residents stating their grievances. They feel a dock that exceeds the 75' maximum length per Zoning Bylaws will result in excessive protrusion into the cove and limit public use of the water. The residents fear the placement of the dock will have an adverse impact on the coastal ecology and recreational uses. The residents do not want to allow for the future proliferation of docks in the area. Mr. Keys brought to the Board's attention that the ruling of the Conservation Commission is under appeal with the MassDEP and could be overturned. It is also likely that other town Boards need to be involved based on these current objections – such as the Board of Health for noise concerns.

Eduardo Marks, of 178 Dogwood Street, stated the East side of West Island is federally protected. In his opinion, a dock system over the estuaries would do harm, as the pressure

treated pylons and boat motors could potentially pollute the waters. He also claimed the pylons will impact shellfish, currents, vegetation and the marsh.

John Elander III, of 188 Balsam Street, also objects due to it being beyond the 75-foot Bylaw. He also had concerns of the proposed future high tide gear lift, which will be less than the 25' setback to the neighbor's yard. He feels the appeal should be dismissed, based on this infringement. He also expressed concern that it would interrupt boating within the cove, which already exists, due to the Fairhaven marina across the way.

Mike Ristuccia, of 192 Balsam Street, objects to the dock and feels it will be detrimental to the public good. He claimed in June of 2016 the applicants were involved in a boating accident, in which boaters were thrown overboard, due to speeding in the harbor. He expressed concern for a dock placed just 75 feet from swimmers and quahoggers.

Mr. Wilson, property owner of 55 Grandview Avenue approves the dock and believes the Board recently approved a much larger dock within the hurricane barrier.

Richard Mullin of 178 Dogwood Street, expressed his concern on how the town will move forward with future docks. He is concerned on what the bay will look like in years to come with the proliferation of docks.

Mr. DaSilva read the impact statement submitted by the Harbormaster, which stated the applicants have done everything required by the Harbormaster. The shellfish migration fee has been paid and the dock does not pose a hazard or obstruct waterway navigation.

Mr. DeTerra read the impact statement submitted by the Conservation Agent, which reviewed items that were discussed during the Conservation Commission hearing for the project on November 15, 2021. The Commission did issue an Order of Conditions for this project, with 37 special conditions to prevent long-term impacts to the resource areas. The Commission primarily focused on wetland impacts and did not focus on recreational uses, as those items are within the purview of the Zoning Board of Appeals.

The applicant, Robert Sullivan, made a statement that he is following all regulations and has approval with the Conservation Commission. He requested a continuance and agreed to work with the neighbors by revising and modifying his plan.

Mr. DaSilva made a motion to continue to the January 4, 2022 meeting and was seconded by Mr. Desousa. The motion passed unanimously via roll call vote by Peg Cook, Peter DeTerra, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).

6. REF#: ZBA-2022-023: 17 Studley Street. Applicant and Owner: Michael Rotondo. Applicant seeks a Special Permit for an attached garage conversion for the purpose of an in-law suite, pursuant to Zoning Bylaw 198.16.

Mike Rotondo was present on Zoom. He stated he is converting his existing garage into an in-law apartment.

Robert Glover, property owner of 19 Studley Street, spoke in favor of the conversion.

Mr. DeSousa questioned if the entire garage will be converted. Mr. Rotondo confirmed both floors would be remodeled, along with adding a bathroom.

The Building Commissioner, Chris Carmichael, had no problem with the renovations, as long as the applicant follows the Fairhaven bylaw for in-law apartments.

Mr. Cox made a motion to grant the Special Permit and was seconded by Mr. DeSousa. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).

7. REF#: ZBA-2022-024: 2 Elliot Lane. Applicant and Owner: Sandra Gifford. Applicant seeks a Special Permit for an addition, two floors for the purpose of an in-law suite, pursuant to Zoning Bylaw 198-16.

Mr. Cox made a motion to delay the appeal until the end of the hearing, since there was no representative present physically or on Zoom. The motion was seconded by Mr. DaSilva. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).

8. REF#: ZBA-2022-025: 2 Oxford Street. Applicant and Owner: 2 Oxford Street, LLC. Applicant seeks:

- (1) Special Permit, pursuant to Zoning By-Law 198-32.2, for a proposed 70' fixed pier, 30' gangway and four (4) floats totaling 2500 sq. feet;
- (2) Variance from 198-32.2 C. 3(b) to exceed the 150' maximum pier length to the proposed 215' length;
- (3) Variance from 198-32.2 C. 7 to exceed the 300 sq. ft. total area of any and all floats to the proposed four (4) floats with 1500 sq. ft. of area;
- (4) Variance from 198-32.2 C. 8 for an increase from the maximum number of boats not to exceed two (2) as the four (4) floats will accommodate several boats.

Mr. Cox recused himself from the hearing.

Rich Rheume, from Prime Engineering represented the applicant. He stated the property has a unique topography, with a large region of land that projects out and rises 4 feet above all the surrounding areas. Boats approaching the pier at just 100' would run aground, which creates a navigation hazard. Prime Engineering is proposing to send the pier out beyond that ridge to ensure boats are in an acceptable and safe depth. He presented photographs of the region to the Board members (taken at moon low tide) revealing the land emerging out of the water at normal low tide, and remaining only slightly below the water at high tide.

Mr. Rheume requested that the Board recognize the unique topography in its zoning district. This represents a hardship and an inability to end the pier at only 150 feet. The applicant is requesting three slips to accommodate the applicant's mother across the street and a tenant in the house. The home was a bed and breakfast, in the past, and is located in a single-family residential district.

The applicants, Nina and Robert Weeks spoke on their behalf. They confirmed the home is a two-family with one single tenant and a seasonal in-law apartment. This property does not currently have a license to be a bed and breakfast.

The Building Commissioner/Zoning Enforcement Officer stated the property at 2 Oxford Street was previously listed as a Bed and Breakfast and has apartments over the garage. If it is currently a single-family with an in-law apartment, there is no valid Certificate of Occupancy. He would like to go out for a site visit and issue a new Certificate of Occupancy, once he has assessed the property.

The Zoning Enforcement Officer brought to the Board's attention that several property owners will be using this dock, so an easement would need to be imposed on the property.

Lee Miguel, property owner at 3 North Street, objected to the proposed project. He owns lot 44 and according to his interpretation of the plot plan, this dock will be directly in front of his property. He also brought up that the Harbormaster stated a dock cannot be placed near a CAD cell, which the EPA have placed in the harbor from dredged PCBs.

Chairman, Mr. DeTerra, suggested the applicant work with the neighbors, obtain an impact statement from the Harbormaster, and work with the Building Commissioner. They may then come back to the Board with a modified or downscaled plan.

Mr. DeSousa made a motion to continue 2 Oxford Street to January 4, 2022 and was seconded by Mr. DaSilva. The motion passed unanimously via roll call vote by Peg Cook, Peter DeTerra, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).

9. REF#: ZBA-2022-026: 149 Pleasant Street. Applicant: Adam Perry. Owner: Adam and Nancy Perry. Applicant seeks a finding from the Board that the existing non-conforming structure may be extended to include a proposed 13' x 12' three season room on the existing deck; and that the alteration is not substantially more detrimental than the existing non-conforming use to the neighborhood pursuant to MGL 40A, Section 6.

The applicant, Adam Perry, presented and gave a brief summary of his plans. He proposed to build a three-seasonal room the same size as the existing deck. He does not intend to use insulation; it will just be screened in.

Mr. DeTerra explained this is not a Special Permit or a Variance, but a fact finding and it is not detrimental.

Mr. Cox made motion to grant the finding for 149 Pleasant Street and was seconded by Mr. DeSousa. The motion passed unanimously via a roll call vote by Peg Cook, Francis Cox, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).

10. REF#: ZBA-2022-028: 44 Capeview Street. Applicant and Owner: John DeSimas. Applicant seeks a finding from the Board that the existing non-conforming structure may be extended to include a proposed 20' x 10' three season room on the presently existing deck measuring 4' x 6'; and that the alteration is not substantially more detrimental than the existing non-conforming use to the neighborhood pursuant to MGL 40A, Section 6.

Petitioner, John DeSimas, stated that he purchased the home two years ago and is now looking for a little more space, by screening in the porch. The proposed three-season room will keep with the character of the neighborhood. It will be 8 percent of lot's the total square footage.

Robert Duff, an abutting neighbor at 20 Crescent Drive, is in favor of the project and complimented the design.

Robert Sylvia, property owner of 19 Crescent Drive, is in favor of the project.

Barbara Jean Dane, an abutter located at 13 Crescent Drive, spoke in favor.

Mr. Cox made motion to approve a proposed 20'x10' three season room at 44 Capeview Street and was seconded by Mr. DeSousa. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).

Mr. Cox made a motion to reopen the hearing for 2 Elliot Lane and was seconded by Mr. DeSousa. The motion passed unanimously by Peg Cook, Francis Cox, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).

There was no representative present for 2 Elliot Lane physically or attending on Zoom.

Mr. Cox made motion to continue 2 Elliot until the January 4, 2022 meeting and was seconded by Mr. DeSousa. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).

Mr. Cox made a motion to adjourn at 7:11 p.m. and was seconded by Mr. DeSousa. The motion passed unanimously via roll call vote by Peg Cook, Francis Cox, Ruy DaSilva, Daryl Manchester and Jamie DeSousa (5-0).